

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANDREW GLORIOSO,

Plaintiff,

- against -

FEDERAL BUREAU OF INVESTIGATION and
UNITED STATES,

Defendants.
-----X

REPLY DECLARATION

10-cv-3724 (NG) (RML)

Pursuant to 28 U.S.C. § 1746, Nestor Pujols declares, under penalty of perjury, that the following is true and correct.

1. I am a Paralegal Specialist at the Federal Bureau of Investigation ("FBI"), located at 26 Federal Plaza, New York, New York 10278. I submit this declaration in support of the above-referenced defendants' motion to dismiss and in response to the May 4, 2011 Declaration in Opposition of Jonathan Roberts, counsel to plaintiff Andrew Glorioso ("plaintiff").

2. On May 19, 2011, in my capacity as a Paralegal Specialist, I conducted a search of the FBI Automated Case System ("ACS") for Federal Tort Claims Act ("FTCA") claims pertaining to the alleged automobile collision of August 15, 2008 involving plaintiff Andrew Glorioso and a vehicle owned and operated by the FBI.

3. On May 19, 2011, an ACS search located an October 27, 2008 letter, mailed to Mr. Roberts, as plaintiff's counsel. A true and correct copy of the FBI's October 27, 2008 letter is annexed hereto as Exhibit A.

4. The October 27, 2008 letter mailed to Mr. Roberts enclosed a Standard Form SF-95, titled "Claim for Damage, Injury, or Death."

5. The October 27, 2008 letter sets forth answers to frequently asked questions regarding the SF-95. Among other things, it instructed plaintiff's counsel that:

After a completed and documented administrative claim is filed, the Government has six months to settle a claim prior to the institution of a lawsuit (28 U.S.C. section 2675). Once a determination is made, an offer or denial, you will be notified. If the disposition is unacceptable, the claimant has six months from the date of that determination to either file suit or ask for reconsideration.

(Exhibit A, Oct. 27, 2008 Letter at 2.)

Dated: May 19, 2011



NESTOR PUJOLS
Paralegal Specialist
Federal Bureau of Investigation

EXHIBIT A



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No. NY-300623

26 Federal Plaza
New York, NY 10278

October 27, 2008

Talkin, Muccigrosso and Roberts
Attorney at Law
40 Exchange Place
18th Floor
New York, New York 10005

Attention: Jonathan Roberts
Claim: 903883769

CERTIFIED MAIL: 7003 2260 0002 4093 2581

RE: CLAIMS AGAINST THE UNITED STATES GOVERNMENT
UNDER THE FEDERAL TORT CLAIMS ACT (FTCA)
TITLE 28, UNITED STATES CODE (U.S.C.), §2672

ACCIDENT ON AUGUST 15, 2008

Dear Mr. Roberts:

In response to your recent inquiry enclosed is a Standard Form (SF-95) Claim for Damage, Injury or Death for use in submitting damage claims against the United States Government.

Since claims against the Government are controlled by federal law, it is important that you take time to carefully prepare your administrative claim. An improper claim will be returned and will only delay the processing of your claim.

For future reference, the organization which you originally contacted to file a claim is no longer assigned to this claim. All future correspondence regarding this matter must only be sent to the Federal Bureau of Investigation at the address listed on our letterhead above. You may contact PLS Nestor Pujols at telephone number 212-384-3328 for any questions/problems regarding this claim.

Listed below are answers to frequently asked questions:

TIME PERIOD FOR FILING; LAWSUITS AGAINST THE UNITED STATES

1. An administrative claim against the Government must be submitted within two years from the date of injury. If a claim is not made within that period, it will be disallowed (28 U.S.C. section 2401(b)). After a completed and documented administrative claim is filed, the Government has six months to settle a claim prior to the institution of a lawsuit (28 U.S.C. section 2675). Once a determination is made, an offer or denial, you will be notified. If the disposition is unacceptable, the claimant has six months from the date of that determination to either file suit or ask for reconsideration.

SUING THE GOVERNMENT EMPLOYEE

2. The Government is the sole defendant in cases where a U.S. Government employee, acting within the scope of employment, causes injury or damage through a negligent or wrongful act (28 U.S.C. section 2679(b)). You cannot sue the employee, only the Government, but an administrative claim must be filed first (see number 1 above).

It should be noted that the FTCA does not provide a remedy for persons injured by a Federal employee acting outside the scope of his employment.

ATTORNEY LIMITS

3. Attorney fees are limited by 28 U.S.C. section 2678, which has criminal sanctions. In many instances, the statutory fee limits are considerably lower than the standard contingency fees charged in most law offices. However, claims can be filed without the aid of a lawyer.

PREPARING THE CLAIM FORM

4. Fill in the SF-95 claim form utilizing each of the numbered blocks. If a category is not applicable insert N/A.

AMOUNT OF YOUR CLAIM FORM - SUM CERTAIN

5. Line 12 is of particular importance. Fill in the blocks with the amount you are seeking from the government. Line 12D should be the total of blocks 12A through 12C.

COMBINE ALL AMOUNTS FROM ONE INCIDENT INTO ONE CLAIM

6. You must claim ALL amounts from the same incident at one time. Supplementary claims are not allowed (28 Code of Federal Regulations (C.F.R.) section 14.2(a)). However, an administrative claim may be amended in certain situations (28 C.F.R. section 14.2(c)).

THE GOVERNMENT MAY TAKE UP TO SIX MONTHS TO PROCESS YOUR CLAIM

7. The Government has six months to make a decision on an administrative claim (28 U.S.C. section 2675).

SEPARATE CLAIMS FOR INSURANCE COMPANY AND INSURED WHEN DEDUCTIBLE IS INVOLVED

8. You may claim those amounts which YOU pay. Your insurance company CANNOT make your claim for you by submitting one claim for amount subrogated and your deductible.

ALL AMOUNTS CLAIMED MUST BE JUSTIFIED BY RECEIPTS, ESTIMATES, ETC

9. Bills, receipts, etc. must be submitted in support of ALL amounts claimed. If you fail to document the claim, it will be returned with the request that you do so.

NOTE: If property can be repaired, TWO repair estimates or one paid receipt MUST be submitted.

CLAIMS MUST BE IN THE NAME OF THE INJURED PARTY OR PROPERTY OWNER

10. The claim should be in the name of the injured person and/or the owner of the damaged property (28 C.F.R. section 14.3(a)). However, an agent or other legal representative may file the claim by signing it in a representative capacity (28 C.F.R. section 14.3(b)) as long as the claim is accompanied by documentation, signed by the claimant, authorizing the attorney to present a claim on the claimant's behalf.

CONTACT YOUR OWN INSURANCE COMPANY

11. Many people find that the delay associated with government claims can be reduced by contacting their own insurance company first. In a number of cases, your insurer will pay for the repairs to your car and then the insurer will make a claim against the government to recover the money paid out.

Upon completion, sign, date and return the SF-95, with the necessary documentation, to Federal Bureau of Investigation, 26 Federal Plaza, New York, New York 10278, "attn: Legal Unit"

Sincerely,

MARK J. MERSHON
Assistant Director In Charge

By: 
PAUL F. RAIMONDI
Chief Division Counsel